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09/847,941	05/02/2001	Wayne K. Dunshee	56703USA8A.002	6157

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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/17/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/847,941

Applicant(s)

DUNSHEE, WAYNE K.

Examiner

Kim M. Lewis

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 1-12, 19-22, 24-51, 53, 54, 56, 57 and 59-61 is/are rejected.
- 7) ☒ Claim(s) 13-18, 52, 55 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Action*.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement papers filed 9/24/01, 1/4/02 and 7/5/02 have been received and made of record. Note the acknowledged PTO-1449 forms enclosed herewith.

Response to Amendment

2. The preliminary amendment filed on 1/4/02 has been received and made of record, and as requested, the specification has been amended.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "80" is missing from Fig. 8 and "412" is missing from Fig. 14. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities:
Page 2, line 19, after "thereon" insert --,--; and
Page 34, line 14, "90" should read --90'--.

Appropriate correction is required.

Claim Objections

5. Claim 7 is objected to because of the following informalities:

Claim 7, line 3, after "leg" insert ---. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As regards claim 2, the boundaries of the included angle alpha conflict with the boundaries set forth in the claim from which it depends. More specifically, "about 90° or less" is in conflict with "about 30° or more". As such it is unclear what the minimum and maximum range of the included angle are.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-3, 5-7, 24-27 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US D454,956 S ("Visintainer") in view of U.S. Patent 4,024,312 ("Korpman") .

Regarding claim 1, Visintainer discloses a decorative bandage set which inherently comprises a backing and an adhesive layer, as is typical with conventional bandage. As can be seen from the drawings, the bandages have a plurality of terminal portions that extend outwardly from a central portion. See for example the triangular and square shaped bandages.

Additionally, it can be seen from the triangular and square shaped bandages that the terminal portions taper towards a tip located distal from the central portion, wherein, each terminal portion of the plurality of terminal portions comprises two straight edges defining an included angle of about 90 degrees or less. The applicant should note that the straight edges define right angles having 90 degrees.

The Visintainer patent fails to specifically disclose any specific structural details of the bandage since it is a design patent. As such, Visintainer fails to teach that the

Art Unit: 3761

adhesive layer, which is generally placed on one side of the backing layer, is a stretch removable adhesive.

However, Korpman discloses substantially a highly extensible and elastic backing film laminated with a normally tacky and pressure sensitive elastomeric adhesive to form a tape. The adhesive tape is easily stretchable and may be normally removed by stretching the tape lengthwise in a direction substantially parallel to the surface to which it is applied. Korpman further discloses that this characteristic is important in medical applications where painless removal is desirable (ouchless removal)(abstract and col. 1, lines 41-50).

In view of Korpman, it would have been obvious to one having ordinary skill in the art to provide Visintainer with a stretch releasable adhesive layer in order to provide ouchless removal of the bandage from the user's skin.

As regards claim 2, the degree of the angles defined by the two edges of the terminal portions is about 30 degrees or more.

As regards claims 3 and 5-7, note the Figs. of Visintainer.

As regards claims 24, 25, 37 and 38, both Visintainer and Korpman fail to teach a setback width measured at a setback distance of 5 millimeters towards the central portion from the tip along the longitudinal axis wherein the setback width is about 10 millimeters or less when measured perpendicular to the longitudinal axis, and further wherein the setback width is about 2.5 millimeters or more when measured perpendicular to the longitudinal axis.

Visintainer and Korpman also fail to teach the setback width is about 6 millimeters or more when measured perpendicular to the longitudinal axis, and further wherein the setback width is about 8 millimeters or less when measured perpendicular to the longitudinal axis.

Visintainer and Korpman even further fail to teach a setback width measured at a setback distance that is 25% of the maximum width towards the central portion from the tip along the longitudinal axis, wherein the setback width is about 60% or less of the maximum width when measured perpendicular to the longitudinal axis, and further wherein the setback width is about 10% or more of the maximum width when measured perpendicular to the longitudinal axis.

Visintainer and Korpman additionally fail to teach that the setback width is about 30% or more of the maximum width when measured perpendicular to the longitudinal axis, and further wherein the setback width is about 45% or less of the maximum width when measured perpendicular to the longitudinal axis.

Absent a teaching as to the criticality and/or a showing of unexpected results derived from providing the medical article's terminal portions with claimed setback width dimensions, the examiner contends that the dimensions of the setback width is an obvious design choice which does not patentably distinguish applicant's invention.

As regards claims 26, 27, 39 and 40, note the Figs. of Visintainer.

Claim 4, 8-11, 28-32, 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visintainer in view of Korpman as applied to claim 1 above and in

Art Unit: 3761

further view of Curad, Extreme Shapes TM, Bandages for fingertip, elbow/knee, or knuckle, Beiersdorf Inc., Wilton, CT 06897 (2000)(Photocopy of Packaging) ("Curad").

As regards claims 4, 28 and 41, the modified device of Visintainer fails to teach a radiused tip. However, Curad teaches additional ornamental designs for bandages having radiused tips (Exhibit 1). It would have been obvious to one having ordinary skill in the art to provide the modified device of Visintainer with radiused tips for ornamental purposes.

It would have been further obvious to add the particular feature of a radiused tip to the modified device of Visintainer since the applicant has not disclosed that this particular design solves any stated problem or is for any particular purpose, and it appears that the invention would perform equally well with different tips .

Whether this particular feature solves any particular problem or produces any unexpected result, I must conclude that it is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art of record. *In re Kuhle*, 526 F.2d 53, 188 USPQ (CCPA 1975).

As regards claim 8, both Visintainer and Korpman fail to teach that the plurality of terminal portions comprises only one pair of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions.

Curad teaches additional ornamental designs of bandages, wherein, one of the bandages comprises only one pair of opposing terminal portions, wherein each pair of

Art Unit: 3761

opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions.

As regards claim 9-11, both Visintainer and Korpman fail to teach the claimed bandage configurations. However, Curad also teaches bandages having a plurality of terminal portions, wherein the plurality of terminal portions comprises two or more pairs of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portions and aligned along a common axes extending through the tips of the pair of opposing terminal portions, and further wherein the common axes of two or more pairs of opposing terminal portions are aligned with each other (Exhibit 2).

Curad further teaches bandages having a plurality of terminal portions, wherein the plurality of terminal portions comprises only two pairs of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions and further wherein the common axes of the two pairs of opposing terminal portions intersect each other within the central portion of the backing, and wherein the common axes are substantially perpendicular (Exhibit 2).

It would have been obvious to one having ordinary skill in the art to provide the modified bandage of Visintainer in the shapes disclosed in Curad for ornamental purposes since the applicant has not disclosed that these particular designs solve any

Art Unit: 3761

stated problem or is for any particular purpose, and it appears that the invention would perform equally well being constructed from different shapes.

As regards claims 29-32, note the rejections of claims 9-11 above. In further regard to claim 32, as can be seen from Exhibit 2, the common axes are substantially perpendicular

As regards claims 42-45, note the rejections of claims 9-11 above. In further regard to claim 45, as can be seen from Exhibit 1, the common axes are substantially perpendicular.

11. Claims 19-21, 33-35 and 46-48 are rejected under 35 U.S.C. 103(a) as being obvious over Visintainer in view of Korpman as applied to claims 1, 10, 24 and 37 above and in further view of U.S. Patent No. 6,133,173 ("Riedel et al.").

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the

application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

As regards claims 19-21, 33-35 and 46-48, both Visintainer and Korpman fail to teach that the adhesive layer comprises a nonwoven web of pressure sensitive adhesive fibers, wherein each of the fibers comprise a pressure sensitive adhesive component comprising a crosslinked acrylate copolymer derived from a melt-processable acrylate copolymer and a crosslinking agent, wherein the crosslinked acrylate copolymer comprises copolymerized monomers comprising at least one monoethylenically unsaturated alkyl (meth)acrylate monomer, at least one monoethylenically unsaturated free-radically copolymerizable reinforcing monomer having a homopolymer glass transition temperature higher than that of the alkyl (meth)acrylate monomer, and a reinforcing material comprising a metallocene-catalyzed polyolefin within the pressure sensitive adhesive component.

Riedel et al. teach a nonwoven cohesive wrap comprising pressure sensitive adhesive fibers, wherein each of the fibers comprise a pressure sensitive adhesive component comprising a crosslinked acrylate copolymer derived from a melt-processable acrylate copolymer and a crosslinking agent in the form of a vinyl group (col. 4, lines 31-50 and col. 6, line 59-col. 7, line 65), wherein the crosslinked acrylate

Art Unit: 3761

copolymer comprises copolymerized monomers comprising at least one monoethylenically unsaturated alkyl (meth)acrylate monomer, at least one monoethylenically unsaturated free-radically copolymerizable reinforcing monomer having a homopolymer glass transition temperature higher than that of the alkyl (meth)acrylate monomer, and a reinforcing material comprising a metallocene-catalyzed polyolefin within the pressure sensitive adhesive component (col. 5, lines 31-39 and col. 8, line 66-col. 9, line 25) for the purpose of providing a substantial increase in the shear strength of the adhesive layer. The applicant should note that styrene is a vinyl aromatic compound used as a crosslinking polymeric material disclosed in U.S. Patent No. 4,554,324 ("Husman et al."). The applicant should note that Riedel et al. disclose that suitable crosslinking agents are disclosed in Husman et al. Note Specifically, col. 6, line 67 – col. 7, line 3.

It would have been obvious to one having ordinary skill in the art to substitute the adhesive layer of the modified device of Visintainer for the nonwoven adhesive layer of Riedel et al. for the purpose of providing a substantial increase in the shear strength of the adhesive layer.

12. Claims 22, 36 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visintainer in view of Korpman and Reidel et al. as applied to claims 19, 33 and 46 above, and further in view of U.S. Patent No. 5,238,733 ("Joseph et al.").

As regards claims 22, 36 and 49, Visintainer Korpman and Riedel et al. fail to teach the backing comprises an extensible nonwoven web comprising fibers having at

Art Unit: 3761

least two substantially continuous layers throughout the fiber length, wherein the layers comprises at least one first layer of low modulus material and at least a second layer of a relatively nonelastic higher modulus material capable of undergoing permanent deformation.

However, Joseph et al. disclose a stretchable nonwoven web that can be used as a backing for an adhesive article. Joseph et al. disclose that the nonwoven web comprises fibers having at least two substantially continuous layers throughout the fiber length, wherein the layers comprise at least one first layer of low modulus material and at least a second layer of a relatively nonelastic higher modulus material capable of undergoing permanent deformation (Abstract and claim 1). Joseph et al. disclose that the purpose of constructing the nonwoven web in this manner is to distribute across stress the entire web rather such that failure does not occur at weak points (col. 6, lines 9-45).

It would have been obvious to one having ordinary skill in the art to provide the modified device of Visintainer as discussed above in the rejection of claims 19, 33 and 46, with the stretchable nonwoven web of Joseph et al. in order to widely distribute the stress across the web in order to prevent web failure.

13. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korpman in view of Visintainer.

As regards claims 59, Korpman discloses a method of making a medical article comprising providing a backing and applying a stretch removable pressure sensitive

Art Unit: 3761

adhesive to a major surface of the backing to form a medical article. Korpman fails to teach the shape of the claimed medical article.

Visintainer discloses a decorative bandage set comprising the ornamental design of various shaped bandages. Included in the set are triangular and square (diamond) shaped bandages. The square (diamond) bandages comprise a plurality of terminal portions extending outwardly from a central portion, wherein each terminal portion of the plurality of terminal portions tapers towards a tip located distal from the central portion, wherein each terminal portion of the plurality of terminal portions comprises two edges leading to the tip, the two edges defining an included angle of about 90 degrees.

It would have been to one having ordinary skill in the art to provide the bandages Korpman in any shape in the set disclosed by Visintainer for ornamental purposes.

14. Claims 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korpman in view of Curad.

As regards claims 60 and 61, Korpman discloses a method of making a medical article comprising providing a backing and applying a stretch removable pressure sensitive adhesive to a major surface of the backing to form a medical article. Korpman fails to teach the medical article has both the claimed shape and dimensions.

Absent a teaching as to the criticality and/or a showing of unexpected results derived from providing the medical article's terminal portions with claimed setback width dimensions, the examiner contends that the dimensions of the setback width is an obvious design choice which does not patentably distinguish applicant's invention.

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Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 1-3, 5-7, 12, 24-27, 37-40, 50-51, 53, 54, 56, 57, 59-61 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17, 30 and 51 of copending Application No. 09/934450 ("the '450 application") in view of Visintainer.

As regards claim 1, claim 17 of the '450 application discloses substantially all features of the claim except a plurality of terminal portions extending outwardly from a central portion, wherein each terminal portion of the plurality of terminal portions tapers towards a tip located distal from the central portion, wherein each terminal portion of the plurality of terminal portions comprises two edges leading to the tip, the two edges defining an included angle of about 90 degrees or less.

Visintainer discloses a decorative bandage set comprising the ornamental design of various shaped bandages. Included in the set are triangular and square (diamond)

Art Unit: 3761

shaped bandages. The square (diamond) bandages comprise a plurality of terminal portions extending outwardly from a central portion, wherein each terminal portion of the plurality of terminal portions tapers towards a tip located distal from the central portion, wherein each terminal portion of the plurality of terminal portions comprises two edges leading to the tip, the two edges defining an included angle of about 90 degrees.

It would have been to one having ordinary skill in the art to provide the bandages of the '450 application in any shape in the set disclosed by Visintainer for ornamental purposes.

As regards claims 2, 3 and 5-7, note the Figs. of Visintainer.

As regards claim 12, claim 30 of the '450 application discloses the central portion as having a tab.

As regards claims 24, 25, 37 and 38 both the '450 application and Visintainer fail to teach the claimed setback width and setback distance. It would have been an obvious matter of design choice to add these particulars to the modified device of the '450 application since the applicant has not disclosed that these particular dimensions solve any stated problem or are for any particular purpose, and it appears that the invention would perform equally well with different setback widths and setback distances.

Whether these particulars solve any particular problem or produce any unexpected result, I must conclude that they are merely matters of engineering design choice, and thus do not serve to patentably distinguish the claimed invention over the prior art of record. *In re Kuhle*, 526 F.2d 53, 188 USPQ (CCPA 1975).

As regards claims 26, 27, 39 and 40, note the Figs. of Visintainer.

As regard claims 50, 51 and 59, claim 51 of the '450 application substantially disclose all features of method claim except a plurality of terminal portions extending outwardly from a central portion, wherein each terminal portion of the plurality of terminal portions tapers towards a tip located distal from the central portion, wherein each terminal portion of the plurality of terminal portions comprises two edges leading to the tip, the two edges defining an included angle of about 90 degrees or less. Note the double patenting rejection of claim 1 above, which discusses obviousness of the absent feature.

As regards claim 53, 56, 60 and 61, note the rejection of claims 24, 25, 37 and 38 above.

As regards claims 54 and 57, note the double patenting rejection of claims 50 and 51 of the '450 application.

This is a provisional obviousness-type double patenting rejection.

17. Claims 4, 8-11, 28-32, 41-45 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of the '450 application in view of Visintainer and Curad

As regards claims 4, 28 and 41, both the '450 application and Visintainer fail to teach radiused tips. However, Curad teaches additional ornamental designs of bandages, such bandages have radiused tips.

It would have been obvious to one having ordinary skill in the art to provide the modified device of the '450 application with radiused tips for ornamental purposes.

As regards claim 8, both the '450 application and Visintainer fail to teach that the plurality of terminal portions comprises only one pair of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions.

Curad teaches additional ornamental designs of bandages, wherein, one of the bandages comprises only one pair of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions.

As regards claim 9-11, both the '450 application and Visintainer fail to teach the disclosed bandage configurations. However, Curad also teaches bandages having a plurality of terminal portions, wherein the plurality of terminal portions comprises two or more pairs of opposing terminal portions, wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portions and aligned along a common axes extending through the tips of the pair of opposing terminal portions, and further wherein the common axes of two or more pairs of opposing terminal portions are aligned with each other.

Curad further teaches bandages having a plurality of terminal portions, wherein the plurality of terminal portions comprises only two pairs of opposing terminal portions,

Art Unit: 3761

wherein each pair of opposing terminal portions comprises two terminal portions located on opposite sides of the central portion and aligned along a common axis extending through the tips of the pair of opposing terminal portions and further wherein the common axes of the two pairs of opposing terminal portions intersect each other within the central portion of the backing, and wherein the common axes are substantially perpendicular.

It would have been obvious to one having ordinary skill in the art to provide the modified bandage of the '450 application in the shapes disclosed in Curad for ornamental purposes.

As regards the rejection of claims 29 and 42, note the rejection of claim 8.

As regards the rejection of claims 30 and 43, note the rejection of claim 9.

As regards the rejection of claims 31, 32, 44 and 45, note the rejection of claims 10 and 11.

This is a provisional obviousness-type double patenting rejection.

18. Claims 19-22, 33-36 and 46-49 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 12, 19 and 28 of copending Application No. 09/847942 ("the '942 application") in view of Visintainer.

As regards claims 19-22, 33-36 and 46-49, claims 11, 12 19 and 28 of the '942 application disclose the claimed adhesive components and backing material (substrate),

Art Unit: 3761

but fails to teach the shape of the medical article as claimed in claim 19-22, 33-36 and 46-49.

Visintainer discloses a decorative bandage set comprising the ornamental design of various shaped bandages. Included in the set are triangular and square (diamond) shaped bandages. The square (diamond) bandages comprise a plurality of terminal portions extending outwardly from a central portion, wherein each terminal portion of the plurality of terminal portions tapers towards a tip located distal from the central portion, wherein each terminal portion of the plurality of terminal portions comprises two edges leading to the tip, the two edges defining an included angle of about 90 degrees.

It would have been to one having ordinary skill in the art to provide the bandages of the '942 application in any shape in the set disclosed by Visintainer for ornamental purposes.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

19. Claims 13-18, 52, 55, 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12/14/12 20. Claims ^{is} 23 and are allowed.

21. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or fairly suggest a medical article comprising

a predefined tab located within the central portion of the backing, wherein the predefined tab comprises a fold"as per instant claims 13-18 and 23.

The prior art also fails to teach or fairly suggest a method of removing a medical article from the skin comprising the step of "grasping the medical article within the central portion; and stretching the medical article within the central portion to remove the medical article from the skin". Although the prior art teaches that stretch removable adhesive articles are known, these tapes are generally stretched lengthwise in a direction parallel to the surface to which they are applied (*i.e.*, they are either stretched from one end as disclosed by U.S. Patent No. 4,024,312 or stretched from both ends as disclosed by EP Patent Application No. 0 747 027 A2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

Application/Control Number: 09/847,941
Art Unit: 3761

Page 21

A handwritten signature in black ink, appearing to read 'Kim M. Lewis', is positioned above the printed name.

Kim M. Lewis
Primary Examiner
Art Unit 3761

kml
April 14, 2003